

**REMARKS**

Applicants thank the Examiner for the detailed Office Action dated 12 October 2008. Applicants respectfully request reconsideration of the present application in view of the reasons that follow.

Claims 1-18 and 21-29 were pending in the application. Claims 30 and 31 have been added. After amending the claims as set forth above, claims 1-18 and 21-31 are pending in this application.

For simplicity and clarity purposes in responding to the Office Action, Applicants' remarks are primarily focused on the rejections applied to the independent claims (*i.e.*, claims 1, 7, 13, 21, and 24) as outlined in the Office Action with the understanding that the dependent claims are patentable for at least the same reasons (and in most cases other reasons) that the independent claims are patentable. Applicants expressly reserve the right to argue the patentability of the dependent claims separately in any future proceedings.

**Claim Rejections – 35 U.S.C. § 102*****Independent Claims 1, 7, 13, 21, and 24 over Modesitt et al.***

On page 2 of the Office Action, independent claims 1, 7, 13, 21, and 24 and various dependent claims were rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 6,136,010 to Modesitt et al.. Applicants respectfully traverse the rejection. Modesitt et al. does not identically disclose the subject matter recited in independent claims 1, 7, 13, 21, or 24.

Modesitt et al. does not identically disclose the combination of elements recited in independent claim 1. For example, independent claim 1 recites a “vascular closure device” including, among other elements, a “suture configured to move with the first needle from the

retracted position to the extended position,” and a “snare configured to move with the second needle from the retracted position to the extended position, the snare also being configured to grasp the suture,” which is not identically disclosed in Modesitt et al. The Examiner is interpreting the suture 74 as being part of the snare. However, suture 74 does not qualify as the snare recited in claim 1 because it does not move with a needle from a retracted position to an extended position.

Modesitt et al. does not identically disclose the combination of elements recited in independent claim 7. For example, independent claim 7 recites a “vascular closure device” including, among other elements, an “anchor configured to extend through an opening in a blood vessel,” a “snare configured to be inserted through a wall of the blood vessel at a location that is adjacent to the opening in the blood vessel, and a “suture configured to be inserted through the wall of the blood vessel at another location that is adjacent to the opening, the snare also being configured to grasp the suture in the blood vessel and retract the suture through the wall of the blood vessel,” wherein “the vascular closure device is configured to close the opening in the blood vessel,” which is not identically disclosed in Modesitt et al. The Examiner is interpreting the suture 74 as being part of the snare. However, suture 74 does not qualify as the snare recited in claim 7 because it is not inserted through a wall of the blood vessel at a location that is adjacent to the opening in the blood vessel. Moreover, the anchor of Modesitt does not move between a contracted configuration and an expanded configuration as recited in independent claim 7.

Modesitt et al. does not identically disclose the combination of elements recited in independent claim 13. For example, independent claim 13 recites a “method of closing a

vascular opening” including, among other elements, “inserting a sheath into a vessel through a vessel opening,” “inserting a snare into the vessel on a first side of the vessel opening,” “inserting a suture into the vessel on a second side of the vessel opening,” and “grasping the suture with the snare,” which is not identically disclosed in Modesitt et al. The Examiner is interpreting the suture 74 as being part of the snare. However, suture 74 does not qualify as the snare recited in claim 13 because it is not inserted into the vessel on a first side of the vessel opening.

Modesitt et al. does not identically disclose the combination of elements recited in independent claim 21, as amended. For example, independent claim 21, as amended, recites a “vascular closure device” including, among other elements, a “needle positioned at a distal end of the vascular closure device, the needle being configured to move between a retracted position and an extended position,” and a “suture configured to move with the needle from the retracted position to the extended position, wherein a portion of the suture extends lengthwise from a tip of the needle toward a proximal end of the vascular closure device, the portion of the suture being positioned outside of the needle,” which is not identically disclosed in Modesitt et al. The suture 34 in Modesitt et al. is positioned inside the needle 38'. Fig. 11 shows the suture 34 inside the needle and shows the suture 34 extending proximally toward the user. The drawing is of such a nature that the needle is actually present (hence the phantom lines) but has been omitted to show the path of the suture.

Modesitt et al. does not identically disclose the combination of elements recited in independent claim 24. For example, independent claim 24 recites a “method of closing an opening in a blood vessel” including, among other elements, “inserting a suture through a wall of

the blood vessel at a location that is adjacent to the opening,” “inserting a snare through the wall of the blood vessel at another location that is adjacent to the opening,” and “grasping the suture with the snare and withdrawing the suture through the wall of the blood vessel,” which is not identically disclosed in Modesitt et al. The Examiner is interpreting the suture 74 as being part of the snare. However, suture 74 does not qualify as the snare recited in claim 24 because it is not inserted through the wall of the blood vessel at another location that is adjacent to the opening that is being closed by the method.

Accordingly, Applicants respectfully submit that independent claims 1, 7, 13, 21, and 24 and the claims which are dependent thereon are not anticipated by Modesitt et al. under 35 U.S.C. § 102(b) and are patentable.

***Independent Claim 7 over Evans et al.***

On pages 3-4 of the Office Action, independent claim 7 and various dependent claims were rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 5,728,114 to Evans et al. Applicants respectfully traverse the rejection. Evans et al. does not disclose the subject matter recited in independent claim 7.

Evans et al. does not identically disclose the combination of elements recited in independent claim 7. For example, independent claim 7 recites a “vascular closure device” including, among other elements, an “anchor configured to extend through an opening in a blood vessel, the anchor being configured to move between a contracted configuration where the anchor is sized to fit through the opening in the blood vessel and an expanded configuration where the anchor is too large to fit through the opening in the blood vessel,” which is not identically disclosed in Evans et al. The alleged anchor 22 of Evans et al. does not extend

through an opening in a blood vessel. Instead, the alleged anchor 22 is shown outside the blood vessel in the Figures in Evans et al.

### **Claim Rejections – 35 U.S.C. § 103(a)**

#### ***Independent Claim 1***

On page 5 of the Office Action, independent claim 1 and various dependent claims were rejected under 35 U.S.C. § 103(a) as being unpatentable over Riza in view of U.S. Patent No. 5,330,488 to Goldrath and U.S. Patent No. 5,562,684 to Kammerer. Applicants respectfully traverse the rejection. None of the cited references, alone or in combination, disclose, teach, or suggest the subject matter recited in independent claim 1.

Applicants respectfully submits that Riva teaches away from combining these references in the manner asserted in the Office Action because if a pre-tied knot was used with the trocar gripper 10 of Riva, the trocar gripper would be sutured to patient – a result that would clearly be undesirable. Applicants respectfully note that the suture in Riva extends through the holes 19 and 20 (see Figs. 1 and 5) of the trocar gripper 10. If the knot was pre-tied, then it would simply serve to suture the trocar gripper 10 to the opening in the patient. Accordingly, there is no reason why anyone would make such a modification.

Applicants respectfully submit that the subject matter recited in independent claim 1 and the claims which are dependent thereon, considered as a whole, would not have been obvious to a person of skill in the art and are patentable. Accordingly, Applicants request the Examiner to withdraw the rejection of these claims under 35 U.S.C. § 103(a).

Applicants respectfully submit that the present Application is in condition for allowance. Applicants request reconsideration and allowance of the pending claims. The Examiner is invited to contact the undersigned by telephone if the Examiner needs anything or if a telephone interview would advance the prosecution of the present application.

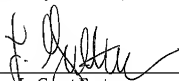
Applicants respectfully put the Patent Office and all others on notice that all arguments, representations, and/or amendments contained herein are only applicable to the present patent application and should not be considered when evaluating any other patent or patent application including any patents or patent applications which claim priority to this patent application and/or any patents or patent applications to which priority is claimed by this patent application.

Respectfully submitted,

Date

12 March 2008

By

  
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